

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CARLOS JOHNSON

PLAINTIFF

v.

Civil No. 2:16-CV-02144

ALEJANDRO MARIN

DEFENDANT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before this Court is Defendant's Motion to Dismiss for Failure to Substitute a Proper Party filed on March 3, 2017. (ECF No. 17). On November 30, 2016, Defendant filed a Suggestion of Death advising that Plaintiff, Carlos Johnson, died on or about September 25, 2016. (ECF No. 16).

Rule 25 of the Federal Rules of Civil procedure governs the substitution of parties after death, and it provides in part, “[i]f the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). The Advisory Committee Notes for this rule make clear that the time does not begin to run until the death is suggested on the record by service of a statement of the fact of death. *Id.* In the present case, Defendants' counsel filed a Suggestion of Death on November 30, 2016. (ECF No. 16). Plaintiff's successor or personal representative had 90 days from that date, or until February 28, 2017, to file a motion to substitute. No such motion to substitute has been filed with the Court.

Accordingly, the undersigned must recommend that Defendant's Motion to Dismiss for Failure to Substitute a Proper Party (ECF No. 17) be GRANTED, and that this case be dismissed

pursuant to Fed. R. Civ. P. 25(a).

The parties have fourteen (14) days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the District court.

DATED this 19th day of September 2017.

/s/ *Mark E. Ford*

HON. MARK E. FORD
UNITED STATES MAGISTRATE JUDGE